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ABSTRACT

During the past decade the Federal Government has significantly retreated from its historical responsibility to maintain the free flow of information that is essential to maintain a healthy democracy. This responsibility includes the collection of basic data on the health of the economy as well as the dissemination of information that assists and propels public debate. The Office of Management and Budget (OMB), which has wide-ranging authority over Federal information activities, is the agency primarily responsible for discouraging the flow of public information. It has failed in its mandate to improve Federal information resources management (Circular A-130), deferring to private sector businesses instead of helping agencies to plan for the new electronic information age. Two areas in which OMB has exercised control over Federal information activities are paperwork reduction and information resources management, and management of Federal information dissemination through reductions in printing of government publications and the privatization of government information dissemination. The consequences of these cutbacks in information activities have been magnified by the current revolution in information technology. Efforts should be made to: (1) articulate a national information policy; (2) reform legislative direction and oversight; (3) reduce centralized political control of Federal agency information activities; and (4) strengthen the capabilities of Federal agencies to control their information activities. Congress and the President must work together to redirect Federal information policies and practices if the free flow of public information is to be ensured. (SD)

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Strengthening Federal Information Policy: Opportunities and Realities at OMB

Gary Bass & David Plocher

Benton Foundation
Project on Communications & Information Policy Options

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Benton Foundation Project on Communications & Information Policy Options

In early 1988, the Benton Foundation commissioned a series of eight papers to explore future options for public policy in the communications and information arenas. Written by recognized authorities in their respective fields, the papers identify critical issues and options confronting policymakers at the federal level.

Through the publication of this series, the foundation seeks to stimulate public awareness and discussion of the communications and information issues that will affect our society in the coming decade. Two broad themes are addressed in the papers: the role of policy in the rapidly changing mass media marketplace; and the ethical, constitutional, and regulatory challenges that arise from the increasing use of computers in our society.

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Strengthening Federal Information Policy: Opportunities and Realities at OMB

Gary Bass & David Plocher

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Executive Summary

The free flow of information is the lifeblood of our democratic society. In the past decade, however, the Federal government has retreated significantly from its historical responsibility to maintain that flow— from collection of basic data on the health of the economy to dissemination of information that assists and propels public debate.

The agency primarily responsible for this attack on the flow of public information is the U.S. Office of Management and Budget (OMB) — the largest unit in the Executive Office of the President. OMB has wide-ranging authority over Federal information activities, most notably under the Paperwork Reduction Act of 1980. With this power OMB has restricted the collection and dissemination of information by Federal agencies, and has limited public access to information. It has also failed in its mandate to improve the management of Federal information activities — deferring to private sector business interests instead of helping agencies plan for the new electronic information age.

After reviewing the record of OMB's control of Federal information activities, this paper gives specific recommendations for change. Efforts should be made to:

(1) Articulate a national information policy;

(2) Reform legislative direction and oversight;

(3) Reduce centralized political control of Federal agency information activities; and

(4) Strengthen the capabilities of Federal agencies to manage their information activities.

Congress and the President must work together to redirect Federal information policies and practices. Congressional action is needed to revise statutes. Presidential leadership is needed to turn abstract policies into an agenda for change. Most immediately, two things should be done.

First, the President should reaffirm the value of Federal information activities and the responsibility of the Federal government to collect and disseminate information that is of value to all sectors of our society, not just to internal government operations. In this, he must not only elevate symbols that evoke the public's right to know about public issues and government initiatives, but also require a new commitment of OMB to improve the management of Federal information activities, including the use of electronic information technology.

Second, the President and Congress should develop legislative proposals to reform Federal policies. A window of opportunity exists in 1989, since the Paperwork Reduction Act will need reauthorization. The law should be amended, at a minimum, to limit OMB's political control of agency activities and to shift its emphasis from "paperwork reduction" to improved "information resources management."

If these initial steps are taken, there is a good chance that as we enter the electronic information age, further progress can be made to ensure the free flow of public information, which is presently so much at risk.

INTRODUCTION

The free flow of information is the lifeblood of any democratic society, and ours is no exception. It has been the responsibility of our government to maintain that flow — from the collection of basic data concerning the health of the economy to the dissemination of information that assists and propels public debate.

In the past decade, however, the Federal government has retreated significantly from its obligation to ensure the continuity of this flow of information. This has been carried out primarily by the Office of Management and Budget (OMB), the largest unit in the Executive Office of the President. OMB has brought about fundamental shifts in the conduct of four major Federal information activities:

(1) **Reduced information collection** — The centralization of information collection review powers in OMB has resulted in a notable reduction of basic economic, social, health, and safety research, as well as regulatory reporting and recordkeeping requirements. This threatens the collection and evaluation of comprehensive data describing conditions in society, including public needs.

(2) **Reduced access to public information** — The restrictive interpretation of the Freedom of Information Act (FOIA) and the frequent invocation of "national security" priorities have resulted in unprecedented restrictions on public access to information controlled by the Federal government.

(3) **Increased hidden manipulation of information** — The development of automated methods for compiling and reviewing records (such as computer matching and front-end verification), as well as new methods for analysis of statistics (such as proposals to count noncash benefits as income), greatly affect the operation of Federal programs and the delivery of services to the public, yet are conducted in relative secrecy.

(4) **Reduced information dissemination** — The development of centralized management controls and the privatization of information dissemination functions have limited dissemination of public service publications and other information.

The implementation of administrative practices antithetical to the free flow of information has coincided with the accelerating development of electronic information technology. The technical possibilities, as well as private sector business demands, have placed new pressure on traditional management mechanisms and controls. The fundamental problem, however, has been Congress' failure to set Federal information policy and to oversee its implementation. This has created a vacuum in which a presidential management office has emerged as both lawmaker and enforcer.

This paper reviews the record of OMB's control of Federal government information activities and gives specific recommendations for improvement. First, it discusses OMB's most powerful weapon, the Paperwork Reduction Act. This Act gives OMB nearly complete control of Federal information collection activities and other information functions, including information policy, privacy of records, and management of information technology, such as automated data processing equipment (ADP) and telecommunications. Second, the paper examines OMB's efforts to control Federal agency information dissemination functions.

Finally, the paper presents a general assessment of OMB's policies, and suggests ways to repair the damage. The most critical needs are to:

(1) Articulate a national information policy;

(2) Reform legislative direction and oversight;

(3) Reduce centralized political control; and

(4) Strengthen the capabilities of Federal agencies to manage their information activities.

The President will have the major responsibility to provide the needed new direction to Federal information policy. But Congress, too, must play an active role in revising Federal information policies and practices.

We stand at an important point -- the beginning of the electronic information age. The opportunities and dangers before us make it all the more important to reaffirm Federal responsibility to collect and disseminate information for the benefit of everyone in society (recognizing the benefits of information, not just its burdens), and to advance innovative ideas to manage information in an electronic age.

These goals will not be easily achieved. Unless both the Executive and Legislative branches commit themselves to the improvement of Federal information activities, essential government functions and the public's right to know about them will continue to be in jeopardy, and may eventually cease to exist.

PART I. OMB MANAGEMENT OF FEDERAL INFORMATION ACTIVITIES

A. Paperwork Reduction and Information Resources Management

Background — Fighting Red Tape

The Federal government requires a great deal of information to make its decisions. The passage of landmark economic and social legislation over the past twenty years in particular has led to an accelerating growth of this information appetite. This does not sit well with many Americans. While they may be grateful for government services, many resent the burdens of government paperwork.

The Federal government has never been completely insensitive to the problem of excessive paperwork. The Federal Reports Act of 1942, for instance, stated that information should be collected "with a minimum burden . . . [to the public] and at a minimum cost to the Government."[1]

To this end, the 1942 Act granted OMB (then called the Bureau of the Budget) various powers, including the authority to "determine whether or not the collection of information by a Federal agency is necessary for the proper performance of the functions of the agency or for any other proper purpose."[2]

Over the years, the Federal Reports Act proved inadequate to the task of controlling paperwork. According to OMB, by 1979, over 80% of the Federal paperwork burden had been exempted by Congress from OMB control. A notable example was the 1973 exemption of independent regulatory commissions.[3] At the same time, there was a rising public clamor, especially from the business community, concerning government "red tape." The Federal Paperwork Commission was created to study the problem, and in 1977 it reported that the annual Federal "paperwork burden" was approximately 785 million hours, at a cost of $100 billion — that is, the time and money spent by the American public to gather the necessary information and complete Federal forms or reports.[4]

Paperwork was not, however, the only issue confronting Federal policymakers. There was also the slowly dawning awareness of the revolution in information technology, and the desire that the government not be left behind. While the Federal government had been an early leader in the development of computers, it was being eclipsed by private companies. Government information systems were rapidly becoming obsolete, and their management was at best haphazard. Procurement was inconsistent across Federal agencies, often resulting in incompatible systems and significant waste.

In this environment of political pressures and practical problems, OMB began to assume the leading role in supervising improvement of Federal information collection activities. After all, it had paperwork clearance authority under the Federal Reports Act, a mandate to supervise implementation of the recommendations of the Paperwork Commission, and a variety of other management powers.

Importantly, improved management of information activities was not the only reason for paperwork reduction. The Carter Administration (like its successor, the Reagan Administration) considered paperwork to be inextricably bound to the issue of unduly burdensome regulations. Therefore, goals for paperwork reduction were tied to improving the efficiency of the regulatory process and public participation in it. While Carter's plan bolstered OMB's centralized supervision of agency information activities, it relied on decentralized decision-making by individual agencies and envisioned OMB's role to be policy development and oversight, rather than review of specific agency activities.[5]

At the same time that the Carter Administration was refining OMB's supervision of Federal information activities, Congress was considering legislation to accomplish many of the same objectives. These efforts ultimately led to the Paperwork Reduction Act of 1980.

The Paperwork Reduction Act of 1980

Enacted in the final days of the Carter Administration, the Paperwork Reduction Act was popular with virtually everyone. The Senate vote was unanimous and the House voted for it, 328 to 13. President-elect Ronald Reagan supported it, and President Carter, signing the bill into law on December 11, 1980, said it represented "one of the most important steps we have taken to eliminate wasteful and unnecessary Federal paperwork and . . . unnecessary Federal regulations."[6]

The stated goal of the Act was to minimize the paperwork burden on the public and maximize the usefulness of the information collected by the Federal government. While the Act included provisions for strengthening the management of government information activities, the legislative priorities were clear: "Improved management of information resources is the means to achieve the basic mission . . . to reduce and minimize the public burden involved in providing information to the Federal Government."[7]

Members of Congress congratulated themselves on freeing their constituents from the proverbial tangle of bureaucratic red tape, but their votes for paperwork reduction did much more. They created a centralized mechanism for the control of all Federal information and placed it with the already powerful right arm of the President, OMB.

The Act established within OMB the Office of Information and Regulatory Affairs (OIRA) and gave it extensive authority over Federal information functions, including general information policy, paperwork control, statistics, records management, privacy and information security, and automated data processing and telecommunications (each is discussed below).

The concept that ties the various information functions together is "information resources management" (IRM). This involves the coordinated planning and management of all information activities, from creation, collection, and use, through dissemination. IRM figured prominently in the deliberations of the Paperwork Commission, which seized on the concept to call for the coordinated management of all Federal information activities. Criticizing the way in which the management of information activities was fragmented within and among agencies, the Commission called for "a single management coordination umbrella."[8] The Paperwork Reduction Act of 1980 provided that IRM "umbrella."[9]

Information Policy

OIRA's most sweeping statutory mandate was to develop comprehensive information policies for the entire Federal government. The Act specified six tasks for OMB in this regard:

(1) Development, implementation, and oversight of uniform information resources management policies and guidelines;

(2) Initiation and review of proposals for legislation, regulations, and agency procedures to improve information management;

(3) Coordination, through budget review and other means, of agency information practices;

(4) Promotion of greater information sharing among agencies through the use of the Federal Information Locator System (FILS), the review of budget proposals, and other means;

(5) Evaluation of agency information management practices; and

(6) Oversight of planning and research regarding Federal collection, processing, storage, transmission, and use of information.

The Act also gave OMB deadlines for many of these assignments. For example, within the first year of the Act's implementation, OMB was to establish standards for agency audits of major information systems. Within two years, OMB was to create a management control system for all "information handling disciplines," complete action on the recommendations of the Paperwork Commission, and submit proposals to the President and Congress to "remove inconsistencies in laws and practices involving privacy, confidentiality, and disclosure of information."[10]

In 1982 and 1983, Congress held oversight hearings on OMB's implementation of the Act. While OMB officials testified to the Act's

great success, the General Accounting Office (GAO), a congressional watchdog agency, painted a far different picture. In both years, GAO reported that a significant portion of OIRA's resources was devoted to regulatory review activities, to the particular detriment of the Act's information resources management requirements.[11]

For example, of the thirteen tasks to be completed by April 1, 1983, OMB had only completed four. GAO concluded that OMB was basically ignoring its responsibilities for information policy, statistics, and the management of information resources.[12] The irony was that OIRA had no statutory authority with which to justify its preoccupation with regulatory review — it had been mandated by executive order.

Not until the end of 1985 did OMB issue its long awaited information policy directive — OMB Circular No. A-130, "The Management of Federal Information Resources."[13] Although applauded by information services companies for its requirement that agencies "look first to private sources" when planning information activities, the circular falls far short of the Paperwork Reduction Act's mandate for the development of uniform information resources management policies.

The circular begins well enough. It contains a broad affirmation of the role of government information:

> Government information is a valuable national resource. It provides citizens with knowledge of their government, society, and economy — past, present and future; is a means to ensure the accountability of government; is vital to the healthy performance of the economy; is an essential tool for managing the government's operations; and is itself a commodity often with economic value in the marketplace.[14]

Unfortunately, the words seem to hold little meaning for OMB. Circular A-130 is a patchwork quilt of already existing policies and requirements, stitched together with a bias against government

information activities and towards privatizing government operations. The circular repeats many of OMB's information policy duties required by the Paperwork Reduction Act. It extends the Act's information *collection* standards (i.e., "necessary for the proper performance of an agency's functions") to information *dissemination* activities. And it incorporates the economic cost/benefit principles prominent in OMB regulatory review, and the "cost recovery" mandate of OMB Circular A-25, "User Charges."[15]

The antipathy towards government information activities is seen most clearly in the circular's application of the Reagan Administration's "privatization" doctrine to government information activities. The circular goes beyond the standard policy that the government look to the private sector "to supply the products and services the Government needs,"[16] to enunciate a principle that information activities are essentially commercial and should be performed by the private sector.[17] (See discussion below of "The Privatization of Government Information Dissemination.")

As then-OIRA Administrator, Douglas Ginsburg, put it:

> The more money we spend to collect, process and disseminate information, the less there is available for government services...We need to get the government out of the business of producing information products and services that can be provided by the private sector.[18]

The message is clear: information activities are not considered a public service that should be undertaken by the Federal government.[19]

Having devalued the public service nature of government information and having failed to provide the comprehensive policy guidance required by the Act, Circular A-130 did little beyond improving the business prospects of the information industry and solidifying OMB's control of Federal information activities.

Paperwork Control

The Paperwork Reduction Act is most closely identified with OMB's paperwork control powers, by which OIRA desk officers determine "whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility for the agency."[20]

The vehicle for paperwork clearance is a revised version of the process created by the 1942 Federal Reports Act. The biggest change was the elimination of virtually all of the exemptions that had come to limit the 1942 Act. Now only independent regulatory commissions are permitted to overrule OMB decisions.

The basic requirements of the process are simple. OMB reviews all activities of Federal agencies that collect information from ten or more persons. This means that OMB reviews every Federal agency proposal to ask the same question of ten or more persons, whether the answers are voluntary, mandatory, or required to obtain a government benefit, and whether the request for information is in the form of a questionnaire, application form, telephone survey, reporting or record-keeping requirement, statistical survey, or anything else.

If OMB approves the agency proposal, which it can do for up to three years, the item is given an "OMB control number" that must be displayed on every form and is valid for the length of OMB's approval. The form must also contain a description of how and why the information is being collected and an estimate of the burdens associated with it.[21]

To continue collecting the information after the expiration of the approval, the agency must resubmit it to OMB. If OMB does not give its approval, the agency may not collect the information.[22]

OMB's paperwork control functions do not end with paperwork clearance. The Act also requires OMB to:

- Inventory all information collection activities;

- Designate agencies to collect information for other agencies in order to reduce duplication;

- Set "goals for the reduction of the burdens of Federal information collection" activities;

- Oversee the completion of action on the recommendations of the Commission on Federal Paperwork;

- Design and operate the Federal Information Locator System (FILS), which would control duplication by providing an inventory of information collected by Federal agencies; and

- Report annually to Congress regarding paperwork reduction efforts.

Despite the range of tasks, OMB concentrated on only one aspect of paperwork control — centralized paperwork clearance. While OMB frequently trumpeted its victories — for example, it claimed to have reduced Federal paperwork by 32% by the end of 1983[23]— this clearance process was not simply concerned with paperwork; it was an integral part of OMB's regulatory review process.

OMB's regulatory review power came from Executive Order No. 12291, "Federal Regulation," issued February 17, 1981. E.O. 12291 empowered the same OIRA desk officers conducting paperwork review to oversee cost/benefit review of Federal regulations.[24] The order revoked President Carter's Executive Orders 12044 and 12174 on regulations and paperwork. While the Carter orders recognized the connection between regulations and paperwork, their general goals were to improve regulations and balance the need for information against the burden on the public. The Reagan

Administration, on the other hand, had one specific goal — deregulation — and it considered paperwork control to be an important mechanism for achieving that goal.

As the first OIRA Administrator, James C. Miller III, told Congress: "Regulations and paperwork are identified together in the public mind, and realistically we cannot expect to reduce paperwork without also addressing regulatory excess."[25] Accordingly, OMB undertook a "unified approach," combining regulatory and paperwork review. OIRA also staffed the President's Task Force on Regulatory Relief, chaired by Vice President George Bush, which studied regulatory reform and singled out regulations for critical scrutiny.

The authors of the Paperwork Reduction Act had not been oblivious to the dangers of OMB regulatory review, to its tendency to reach into the substance of agency program decisions. The Senate Governmental Affairs Committee, for example, qualified its support for OMB's role in reducing the information burden in regulations, saying that it did "not intend that 'regulatory reform' issues which go beyond the scope of information management and burden be assigned to the Office."[26]

This concern about the impact of paperwork review on regulations also appears in the Act itself, which states that nothing in it should be interpreted to increase or decrease OMB's authority "with respect to the substantive policies and programs" of Federal agencies.[27] The U.S. Third Circuit Court of Appeals ruled in August 1988, that OMB's paperwork review, in the case of OSHA's Hazard Communication Standard, violates this provision because it "embodies substantive policy decision-making entrusted to the other agency."[28]

The Act also instructs OIRA on the review of paperwork requirements in proposed rules. OIRA may review them when agencies issue a notice of proposed rulemaking in the *Federal Register*.[29] The results of OIRA's review are to be treated as "public comments"

that become part of the agency rulemaking record and are considered by the agency as it drafts the final regulation. When the final rule is published in the *Federal Register*, the agency must explain how it has responded to OMB's comments.

While thus limiting OMB's review of regulatory paperwork, Congress left open a rather large loophole. After a final rule is issued, OIRA can disapprove any paperwork requirements if the agency:

(1) Missed any of the required procedural steps;

(2) Substantially changed the paperwork requirement without giving OIRA sufficient opportunity to review it; or

(3) Gave an *"unreasonable"* response to the OIRA comments.[30]

With this "backdoor" to regulations, OMB has the ability to effectively control most agency regulations since, without information collection, most regulations are largely unenforceable.

OMB's reach into the regulatory process was strengthened in 1986 when Congress amended the Act to apply the three-year approval limit to regulatory paperwork — in 1982, the Department of Justice had restricted the three-year limit to non-regulatory paperwork, such as surveys.[31] This insures that OMB will review all information collections required by regulations, such as reporting and record-keeping requirements, at least once every three years. This amounts to "regulatory sunset" — a limit on the life of regulations. To automatically void a regulatory information collection requirement is to void a portion of a regulation, which may undermine the entire regulation. This is something Congress never could bring itself to enact when considering regulatory reform legislation.

OMB's paperwork arsenal includes one other weapon — the "Information Collection Budget" (ICB). First proposed by OMB under President Carter, the ICB works something like the fiscal budget. Agencies plan their information collection activities for the

coming year and add up the "paperwork burdens" on the public by estimating the "burden-hours" expended by respondents. OMB negotiates with the agencies, sets their burden limits (supposedly less each year), and tells them to stay under budget.[32] Unlike the fiscal budget, however, the ICB is not approved by Congress or reviewed in any detail by the public.

While not strictly enforced, the ICB can be an early and effective OMB screen for agency information collection activities. For example, in 1986, the Occupational Safety and Health Administration (OSHA) was forced to eliminate 20 equipment testing and maintenance record-keeping requirements after OMB ordered it to reduce its ICB by eight million hours.[33] The impetus was solely OMB's, and was carried out despite the objections of OSHA's Advisory Committee on Construction Safety and Health, comprised of representatives of industry, labor, state and federal agencies, and academia.

These paperwork reduction powers have undoubtedly allowed OMB to eliminate much wasteful or unnecessary paperwork. Yet they have also exacted a heavy price from agencies and the public, especially since these powers have been used for much more than information resources management.

First, considerable agency resources are expended complying with OMB's paperwork clearance and ICB requirements.

Second, the public participation procedures set forth in the Act and OMB's regulations do not, as a practical matter, facilitate timely access for the general public.[34]

Third, paperwork clearance and the ICB process do not serve program- or mission-oriented management objectives. OMB's burden estimates and arbitrary limits force agencies to haggle over gross numbers that are unrelated to their agency mandates and specific information collection activities.

Fourth, the paperwork clearance process gives individual OMB personnel an enormous amount of discretion, which can result in the

imposition of decidedly questionable views on agencies. For example, in November 1987, OIRA desk officer Nicholas Garcia instructed the Environmental Protection Agency (EPA) to re-evaluate the need for selective auto emissions testing at the manufacturing stage:

> Because of the costs of . . . [recalling vehicles for failure to meet emissions standards], both in terms of bad publicity and actual expenditures, vehicle manufacturers make every effort to ensure that their vehicles are properly made and sufficiently durable to pass these tests. Therefore, the need for a Selective Enforcement Audit Program is not clear.[35]

Finally, through paperwork review, OMB often forces agencies to accept private interest or administration views, overruling agency professionals and disregarding legislative and judicial mandates. Thus, OHSA's elimination of record-keeping requirements, for example, was not merely paperwork reduction or information collection budgeting; it also served the Administration's goal of deregulation. Now, employers need only "certify," if asked by OSHA, that equipment has been maintained and inspected as required.

Operating in this context of the President's political agenda, OMB paperwork review has had quite a selective impact. For example, between 1984 and 1986, OMB was seven times more likely to disapprove proposals for occupational and environmental disease research by the Centers for Disease Control than for research on infectious and other conventional diseases.[36] Other notable targets of OMB paperwork disapproval have been civil rights data collections, the 1990 Census Dress Rehearsal, FCC telephone regulations, and cosmetic risk research.[37]

This record demonstrates that OMB paperwork control efforts have not improved Federal agency information collection activities, not to mention information resources management. Rather, OMB has used the Paperwork Reduction Act to implement the Administration's political agenda through the control of Federal agency information collection activities.

Statistical Policy and Coordination

The Paperwork Reduction Act called for improvement in the collection, interpretation, and dissemination of statistics by the Federal government. The Act mandated that OMB develop and implement government-wide statistical policies and guidelines, and evaluate and coordinate statistical activities, through budget review and as otherwise provided by the Act.

The Act did not grant OMB any significant statistical policy authority that it had not had in the past.[38] However, by including statistical policy coordination in the Act, it placed statistics within the context of "paperwork reduction" and "burden." Not surprisingly, the benefits of Federal statistical activities seemed to be forgotten.

As Katherine K. Wallman, executive director of the Council of Professional Associations on Federal Statistics, points out in a recent paper:

> Emphasis on the "burden budget," performance of agency functions, and "practical utility" has obscured if not eradicated long and widely held beliefs that the government should provide information useful to the Nation's people and its leaders in assessing social and economic conditions, developing prescriptions to address problems, and evaluating the effectiveness of adopted policies.[39]

Nonetheless, within two years of the enactment of the Act, OMB eliminated its statistical policy office, merged it with OIRA, and significantly reduced its staff — some statistics staff were assigned to paperwork and regulatory review.[40] Not until June 1983, was a U.S. Chief Statistician appointed, and she was an economist, not a statistician.[41]

Furthermore, OIRA statistical policies did not improve Federal statistical activities, but rather led to their dismantling. During the

summer of 1982, Christopher DeMuth, then-Administrator of OIRA, told *The New York Times:*

> In the past, agencies collected much greater detail than was needed for national policy-making purposes. It is understood now that agencies [should] justify their data collecting programs to OMB in terms of the needs of the Federal agencies alone, not of states, local governments, or private firms. . .[42]

Rebutting DeMuth, Courtenay Slater, former chief economist of the Department of Commerce, subsequently testifed before Congress on the importance of Federal statistics:

> Only the Federal government can produce statistical series which are uniform and consistent for the Nation as a whole and which are of unquestioned honesty and integrity. The Federal government has a particular responsibility to produce the statistical information it needs for its own use for economic analysis, for budgetary decisions, and for program design and implementation. These needs are too vital to risk serious gaps in the data base by leaving statistical work to anyone else.
>
> The Federal government also has a responsibility to produce statistical information for which there is a national need even if there is not a direct Federal governmental need. . . . The free market economy is a marvelous mechanism, but one of the preconditions for its effectiveness is the availability of information to participants.[43]

While Congress was repeatedly told that OIRA shunned its statistical policy responsibilities under the Paperwork Reduction Act,[44] it did not act until 1986. Then, in the reauthorization of the Act, Congress made two changes. First, it required OMB to hire a trained statistician as the U.S. Chief Statistician. Second, it required the integration of statistical policy and coordination with other information resources management functions, as well as with budgetary

reviews. Needless to say, these reforms did little to slow the assault on Federal statistical activities.

OMB's focus on the "burdens" imposed by data collection, as opposed to the benefits derived from the information, continues to eat away at statistical activities. As a case in point, during the first six months of 1988, of all Federal agencies, the Census Bureau, which is a major source of statistical information, had the most difficulty getting information collection initiatives approved by OIRA. First, 17% of all Census submissions were simply rejected. Another 17% were approved for less than six months, requiring resubmission and usually indicating some problem with OIRA. Four percent were withdrawn after submission, again, signaling OIRA resistance. Finally, Census Bureau reviews took longer, on average, than those of any other agency — 74 days.[45]

When it came to the impact of statistics on other Federal policies, OMB's pressure was also significant. For example, Census Bureau officials have repeatedly indicated that OMB urged Census to count noncash benefits (such as food stamps, school lunches, housing, Medicaid, and Medicare) as income when determining whether someone is below the poverty line. The catch in this redefinition of income is that the poverty line is not redrawn — it continues to be based on cash income only. Thus, the net effect of the OMB plan, so far resulting only in an exploratory Census series that reports the noncash benefit data as income, would be to fight a new kind of war on poverty by defining people out of destitution![46]

Other OMB functions, beyond those of OIRA, have also affected agency statistical activities, most particularly their budgets. According to OMB, roughly $1.5 billion is spent annually on statistics by Federal agencies.[47] While this is a very small part of the Federal budget, in the past eight years OMB has mandated major cuts. Between FY 1980 and FY 1983, the eight major statistical agencies suffered a 21% cut when adjusted for inflation.[48] Between FY 83 and FY 86, funding for statistical activities began to climb again in constant dollars, but not significantly. However, again in FY 1986 and FY 1988, statistical activities received across-the-board cuts during

OMB budget reviews to reduce deficits below the targets of the Gramm-Rudman-Hollings balanced budget law. In total, over the past eight years there has been a real decrease of 13% in the budgets of the major economic statistical programs.[49] This has led to the unprecedented elimination or reduction of Federal statistics.

According to Wallman, budget cuts have led to agencies:

> (1) collecting information less frequently; (2) reducing sample size, the content, and/or the geographic coverage of particular surveys; (3) extending the time between data collection and publication; and (4) eliminating or reducing the frequency, scope, and distribution of publications and other products.[50]

These budget cuts were coupled with staff reductions in many of the statistical agencies. For example, between 1980 and 1982, the major statistical agencies underwent a 19% cut in personnel. Although employment rose from its low point in 1982, it has never regained 1980 levels.

Wallman concludes:

> Within the framework of OMB's Office of Information and Regulatory Affairs, the value of statistical activities has been subjugated to burden reduction initiatives, and human resources devoted to planning and coordination have been minimal. Agencies, in turn, have little in the way of a forum to discuss cross-cutting problems and procedures, and even less means for initiating new priorities and achieving economies of scale and scope through cooperative endeavors.[51]

Without redirection from the President and major changes in the orientation of OIRA, we face the continued dissolution of our Federal statistical infrastructure and the loss of essential information about national (and international) economic and social conditions.

Records Management

The Paperwork Reduction Act granted OMB new authority for the oversight of Federal records. However, as in the case of statistics, placing the administration of Federal records under OMB's paperwork reduction "umbrella" has not improved matters at all. OMB has provided no leadership or direction, and has basically ignored over fifty years of policy analysis that supports the need to improve Federal records management.

Originally, the emphasis in Federal records management was on the archival need to locate and organize records for disposal or preservation — thus the creation of the National Archives in 1934. During the 1940s, as archivists confronted the rapid growth of government documents, they concluded that they should be involved in the entire "life cycle" of agency records. This led to the concepts of "records management" and "paperwork management"[52] — thus the development of "general records schedules" for common categories of records. This broader perspective still governs records management; after all, records decisions on preservation and disposal necessarily depend on agency decisions on information collection, storage, and use.

Despite the growth of understanding about records management, no institutional framework existed to make it work. Archivists and records managers lacked the clout necessary to influence relevant information management decisions. And even those few agencies with government-wide records authority were unable to coordinate their activities. For example, in the 1950s and 1960s, there were continuing squabbles among the Federal Supply Service and the National Archives and Records Service (NARS), both within the General Services Administration (GSA), and the Bureau of the Budget (BoB).[53] While NARS finally developed a government-wide records management program, it was never uniformly implemented, and was repeatedly criticized by the General Accounting Office and others.

NARS' failures were also seized on by the Commission on Federal Paperwork. Echoing over a quarter century of complaints of records managers, the Commission argued:

> [R]ecords management has become so preoccupied with the idea of controlling the document — the letter, report, form — that it is losing sight of the real objective. What should be managed is the data and information on the piece of paper; the paper itself, only incidentally.[54]

The Paperwork Reduction Act of 1980 attempted to solve the problem by giving overall authority to someone new. That someone was, of course, OMB. OMB was to coordinate records management activities with GSA, and oversee agency compliance with records management requirements.

Unfortunately, Federal records management has not prospered under this new scheme, either. In 1982, instead of consolidating functions, GSA divided records responsibility internally between two offices — NARS and the Office of Information Resources Management. This institutionalized the tension between the archival interest in "adequacy of documentation," and the equipment managers' concern with the physical operation of information systems.

This division was written into law in 1984, when a large number of GSA's records management functions, primarily those of NARS, were transferred to a new agency, the National Archives and Records Administration (NARA).[55] NARA was to focus on matters relating to "the creation, storage, and retrieval of information which document the policies and transactions of the Federal government."[56] The powers retained by GSA, in its Office of Information Resources Management (OIRM), related to "economical and effective management of agency operations,"[57] such as forms, filing systems, copying, and office automation.

This bisection of the management of Federal government records definitively overruled the forty-year-old policy that *information* issues of adequacy of documentation and *technical* issues of efficient management of documents and physical information systems are part of the same function, that is records management.[58] For its part, OMB has done virtually nothing to heal the split, or even to coordinate the two sides. Its paperwork regulations state that Federal agencies should not require either the public, or state or local governments to retain records, other than health, medical, or tax records, for more than three years. The OMB regulations say nothing, however, about Federal government records.

OMB's Circular A-130, issued December 1985, asserted:

> The value of preserving government records is a function of the degree to which preservation protects the legal and financial rights of the government or its citizens, and provides an offical record of Federal agency activities for agency management, public accountability, and historical purposes.[59]

However, the circular also stated that "no new [records management] policies are embodied in this Circular."[60] Indeed, the circular does virtually nothing more than reiterate the records management provisions of the Paperwork Reduction Act.[61]

As the 1985 Committee on the Records of Government concluded, "Responsibility for decisions regarding records is fragmented and ill-defined."[62] The Committee found that despite the mandate of the Paperwork Reduction Act, OMB did not concern itself with records management and that the resulting "dispersal of responsibility for records leads to a situation where no individual or agency can or will assume the responsibility."[63] Against this backdrop, it is all the more striking that OMB's most significant involvement with NARA has taken the form of pressure to reduce its budget, and critical review of its regulations, most notably those regarding access to records of the Nixon Administration.[64]

Privacy and Information Security

In its consolidation of OMB control of Federal information activities, the Paperwork Reduction Act included a number of functions under the heading "privacy" — privacy, information security, information disclosure, and confidentiality. Not just decimated, like statistics, or simply ignored, like records management, these functions have been treated every which way but right by OMB. Privacy, in particular, has been turned inside out by OMB's shortsighted interest in easing restrictions on government use of information about individuals. The consequences and implications of OMB's privacy policies are discussed in more detail in the "A Federal Right of Information Privacy: The Need for Reform," by Jerry Berman and Janlori Goldman, and "Watching the Watchers: The Coordination of Federal Privacy Policy," by George Trubow — two other papers in this series.

OMB's authority over privacy issues actually predates the Paperwork Reduction Act. The Privacy Act of 1974, which restricts Federal agency use of information about individuals, gave OMB the responsibility to develop government-wide guidelines and otherwise supervise agency use of personal information.[65]

The Privacy Act was enacted because of two general concerns: (1) the growing computerization of information that makes it much easier to examine records containing information about individuals; and (2) fears, fueled by Watergate, about government abuse of personal information. The case for further Federal action was made in 1977, when the Privacy Protection Study Commission, which was created by the Privacy Act, made over 150 recommendations for strengthening Federal privacy protections.[66]

Nonetheless, under OMB's supervision, the substantive protections of the Privacy Act quickly eroded. As discussed in the Berman/Goldman paper, a major loss was the 1977 decision of the Carter Administration to authorize computer matching programs as a "routine use" of government information, which is exempted from the Act's protections.

The passage of the Paperwork Reduction Act of 1980 enlarged OMB's authority, but did not improve matters. Under the heading of "privacy," the Act reiterated OMB's Privacy Act responsibilities and gave the Office additional authority over information disclosure and security. Specifically, OMB's "privacy functions" include:

- Developing and implementing policies and guidelines on information disclosure and confidentiality, and on safeguarding the security of information collected or maintained by or on behalf of agencies;

- Providing agencies with advice and guidance about information security, restriction, exchange, and disclosure; and

- Monitoring compliance with the Privacy Act and related information management laws.

After passage of the Act, as before, OMB encouraged aggressive use of computer matching, front-end verification and other techniques to examine and compare records about individuals. Although OMB Deputy Director Joseph Wright, who led the fight against "fraud, waste, and abuse," often stressed the importance of protecting individual privacy in the computer era, OMB used the Privacy Act's "routine use" exemption to vitiate the requirement that personal information only be used for the purpose for which it is collected. The result was the transformation of the Privacy Act into a procedural statute, virtually devoid of substance.[67] As Representative Glenn English (D-OK) said in 1983:

> [A]gencies feel free to disclose personal information to anyone as long as the proper notices have been published in the *Federal Register*. No one seems to consider any more whether the Privacy Act prohibits a particular use of information.[68]

In addition to computer matching, OMB's only other concern with the Privacy Act appears to be its paperwork reduction effort to

eliminate "records systems," the sets of records that contain personal information and are separately maintained by agencies.[69] What OMB has never been interested in is the creation of internal administrative procedures to assist in the enforcement of the Privacy Act.[70]

In the realm of "information disclosure," OMB has narrowed public access to government information. Its 1984 restrictive guidelines on the relation of the Freedom of Information Act (FOIA) and the Privacy Act were so objectionable that Congress quickly rejected them.[71] In 1987, OMB issued FOIA fee guidelines, also discussed in "A Presidential Initiative on Information Policy," by John Shattuck and Muriel Morisey Spence — another in this series of papers. These guidelines restrict access to government information by researchers, libraries, and other nonprofit requesters, and generally make it more difficult for people to qualify for "public interest" fee waivers.[72]

In terms of "information security," OMB simply has not had much impact at all. While it defined terms and mandated action in Appendix III to Circular A-130, it basically delegated all responsibility to other agencies, namely the Department of Commerce, Department of Defense, General Services Administration, and the Office of Personnel Management.

Whatever else OMB has accomplished, it is clear that it has failed to develop policies to protect personal privacy and to ensure the faithful implementation of the Freedom of Information Act. This has not only harmed those statutes, but also has violated the mandate of the Paperwork Reduction Act to coordinate and improve the management of these related agency activities.

ADP and Telecommunications

The Paperwork Reduction Act gave OMB oversight of Federal automated data processing (ADP) and telecommunications activities. OMB's responsibilities include:

- Developing and implementing policies and guidelines for Federal ADP and telecommunications, including a five-year plan to be developed with the General Services Administration (GSA);

- Monitoring the effectiveness of the Federal Telecommunications Fund and the 1965 Brooks Act, which governs procurement of ADP equipment;[73]

- Coordinating and advising agencies on the acquisition and use of ADP and telecommunications equipment, through budget review and other means;

- Promoting the use of ADP and telecommunications equipment to "improve the effectiveness of the use and dissemination of data in the operation of Federal programs;" and

- Initiating and reviewing proposals for legislation, regulations, and agency procedures to improve ADP and telecommunications practices, and reporting to the President and Congress on their progress.

Given OIRA's disinclination to concentrate on anything but paperwork clearance, it is not surprising that many observers have complained of poor planning and support, if not disinterest, and general budgetary resistance. In 1984, the General Accounting Office (GAO) reported that "OMB's current agency-by-agency approach to developing telecommunications policies and plans does not ensure that government-wide issues are being examined before such policies and plans are finalized."[74] In 1987, GAO was again critical:

> [N]o overall plan, which spells out the government's management strategy, exists that (1) characterizes which agency requirements should be met by centrally provided services and which should be met by the agencies themselves, (2) identifies needed government-wide technical standards, or (3) defines responsibilities between the central managers and the individual agencies.[75]

In the absence of this government-wide policy direction, individual agencies pursue their own initiatives. Eager to reap the benefits of the Information Age, they develop systems and standards that not only are often inconsistent, but more importantly, set unexamined precedents for government policy.[76] Unfortunately, after eight years there is little evidence that OMB is concerned with this state of affairs.

Conclusion

OMB's implementation of the Paperwork Reduction Act has generally pleased those who believe the Federal government's appetite for information should be significantly curbed. However, it has not pleased those who note the ways in which OMB has used paperwork clearance to target particular programs for exceedingly critical review, such as occupational and environmental health research. This has had perhaps its most lasting impact on the Federal government's ability to provide needed statistical information to policymakers in government, as well as the private sector.

OMB's fixation with paperwork control has also troubled those who are concerned with improved management of Federal information activities. OMB has disregarded its responsibilities for statistical policy and records management. It has supervised the gutting of the Privacy Act. It has tried to pass off the simple reiteration of statutory mandates and procedural checklists as "the development of policies and guidelines," while actually delegating responsibility for them to other agencies. In sum, it has virtually ignored its statutory responsibility to improve Federal information resources management.[77]

Fortunately, Congress will soon have the occasion to review OMB's implementation of the Paperwork Reduction Act. The Act's current authorization expires September 30, 1989. By now all have had sufficient experience with OMB's paperwork powers to compel a thorough examination of the costs and benefits of OMB oversight of Federal information activities.[78]

B. OMB Management of Federal Information Dissemination

Background — Government Printing

The Federal government disseminates a vast array of information. Agency public service pamphlets educate consumers. Grant and contract research leads to the publication of scientific and technical information. The Federal Depository Library system ensures that information is accessible across the country. The National Technical Information Service (NTIS) compiles and makes available scientific and technical information. Government data bases provide information for people and interests as diverse as economists, farmers, and shipping companies. Despite the importance of these information dissemination activities, their management is in disarray and their future is in doubt.

For over 100 years, Title 44 of the U.S. Code has mandated that Federal government printing be performed by the congressional Government Printing Office (GPO) and supervised by the Joint Committee on Printing (JCP). Designed for the "ink on paper" era and for one in which congressional publications were the major products, this scheme is now seriously out of date. In addition to technical obsolescence (especially given the expanding world of electronic data bases and publishing),[79] the attempt to manage all Federal government printing and publishing activities from Congress raises serious separation of powers questions.[80]

Congress has given OMB one management role regarding government publications. Since 1922, the publication of Federal agency periodicals has hinged on OMB "approval" that they are "necessary in the transaction of the public business required by law [of the agency]."[81] Over the years, OMB Circular A-3, "Government Periodicals," has governed the clearance process, which has been conducted by OMB Budget Examiners. The basic standards for this review were the overarching provisions in Title 44 of the U.S. Code and the JCP Government Printing and Binding Regulations.

The OMB War on Publications

The management of government printing remained virtually unchanged until 1981. Soon after entering office, President Reagan announced an OMB-headed campaign to eliminate "wasteful spending" on Federal publications and audio-visual products.[82] OMB quickly issued a moratorium on all new publications and ordered agencies to eliminate all but "those essential to the accomplishment of agency missions."[83] Less than six months later, OMB cancelled all Circular A-3 clearances and required agencies to resubmit all periodicals for review.[84]

The effort culminated in January 1984, when presidential counselor Edwin Meese and OMB Deputy Director Joseph Wright appeared at a press conference with garbage bags filled with newly discontinued publications. They declared that they had eliminated a quarter of all Federal publications and reduced the cost of producing another quarter.[85]

While it is difficult to validate the claims of this "war on waste," many public service publications disappeared, like *Infant Care* and *Your Housing Rights*, and the circulation of many that remained was diminished through consolidations, reduced frequency of printing, price increases and distribution cutbacks. Most publications did not have vocal or politically adept readers, so their absence was simply noted by librarians and others who understood the loss of public information.[86] A few publications, however, had readers with considerably more clout, and they were soon reborn; for example, the *Geographic Distribution of Federal Funds*, which describes by congressional district how much Federal money is received for which Federal programs. When members of Congress discovered the loss of the report that told them how much Federal money their constituents were getting, they immediately enacted legislation to require the Census Bureau to produce the report. While such "market forces" helped some, they did not provide any sort of balanced public policy assessment of what were needed public service publications.

OMB itself was not satisfied with its victory in the war against government publications. It had learned that many agency publications were slipping through its Circular A-3 review process, so it decided to revise the circular.[47]

The revised Circular A-3, issued on May 2, 1985, has an enlarged scope and a new name. No longer limited to periodicals, the circular now covers all "Government Publications." It requires annual agency reporting on periodicals *and* non-recurring publications. Periodicals (still the only publications subject to OMB review by statute) are now approved for only one year; previously they could be approved for up to five years. OMB also expanded the definition of periodicals from publications issued at least semi-annually, to those issued annually or more often.

Under the revised A-3, non-recurring publications must also conform to the statutory standard for periodicals (i.e., "necessary in the transaction of the public business required by law [of the agency]"). While they are not to be individually approved like periodicals, they are monitored generally through annual "expenditure information" and may be specifically reviewed "from time to time by OMB."[48]

Another change in the circular strengthened OMB's hand more generally. The circular now contains no references to the regulations of the Joint Committee on Printing, which figured prominently in earlier revisions. This disassociation of publications review from the JCP has nothing to do with "management improvement." It has everything to do with institutional politics, however; that is, the competition between OMB, as presidential operative, and GPO and the JCP, as congressional entities. While the stakes have been rising, especially given the introduction of constitutional separation of powers arguments against GPO and JCP supervision of Executive branch printing, the various sides have appeared to be disinclined to push for a definitive resolution of the issue of who should be in charge of Federal government printing.[49]

The Privatization of Government Information Dissemination

To supplement its review of agency publications, OMB developed new restrictive information dissemination standards. They are contained in OMB Circular A-130, "The Management of Federal Information Resources," issued December 12, 1985.[90] Nominally developed to satisfy the Paperwork Reduction Act's requirement for the improvement of government-wide information resources management, the circular is most striking in its articulation of a restrictive policy on information dissemination. It states that agencies shall:

> Disseminate such information products and services as are:
>
> (a) Specifically required by law; or
>
> (b) Necessary for the proper performance of agency functions, provided that the latter *do not duplicate similar products or services that are or would otherwise be provided by other government or private sector organizations.* [emphasis added][91]

OMB has attempted to minimize the importance of this requirement, saying that it is merely a "requirement of non-duplication, originating in the Paperwork Reduction Act."[92] It is, quite the contrary, an unprecedented subordination of government public service to the commercial drives of the private sector.

The growing commercial interest in government information fuels the information industry's desire to expand its growing market and restrain government provision of information products and services. Representatives of the information industry argue that many government information activities should be handled by the private sector, on the grounds of unfair competition by government agencies, as well as efficiency.[93] Especially during the past eight years, the industry's arguments reached a sympathetic audience. OMB not only echoed the views of the private information industry, but also implemented its positions.[94]

The issue is not involvement of the private sector in the dissemination of government information. The private sector historically has played a critical role in printing, binding, computer development, market analysis, and more. The real issue is OMB's position that government information activities should be transferred to the private sector whenever possible. This thinking is flawed for a number of reasons. First, the information industry got its start from contracts from the Federal government. The Department of Defense and the Bureau of the Census, for example, supported much of the initial development of computers.

Second, the industry continues to depend on government information. The government collects information businesses cannot gather (e.g., economic statistics and census data). The public information is then made available, generally at the cost of reproduction. Thus, without paying true development costs, businesses reap even larger profits on their information products. Examples range from simple reproduction and sale of publications, such as the *Statistical Abstract*, to the use by market research firms of the Census Bureau's Dual Integrated Map Encoding program (DIME), which was developed for the 1970 census at a cost of over $20 million.[95]

Given such subsidies, it is simply ludicrous to champion the efficiencies of the information marketplace over that of government, or to claim, as the information industry and OMB have, that the public treats information as a "free good." Public money, which supports government information activities, also heavily supports the private information industry.

Further, the characterization of information as a commodity is fundamentally misguided. Information is simply not like other commodities. Its economic elements are so uncertain that it is very difficult, if not impossible, to justify pricing levels and other market controls.[96] This difficulty is underlined by the role information plays in our democracy. While information certainly can have economic value, its flow, unlike the pursuit of ordinary goods, is essential for public participation in and understanding of government, as well as government accountability to the public.[97] To the

extent that access to information is restricted (by price or other controls), democratic participation is restricted. It is therefore untenable to allow principles of the marketplace to be the primary standards by which to evaluate and control information in the public sector. If such principles are to hold sway, public information will disappear as private businesses decide particular products or services are not sufficiently profitable. And for that which remains, price restrictions will close off access to information for many — certainly the poor, but even others, for example, libraries and people without computer skills.

C. Conclusion: The Legacy for the New President

During the past decade, Federal information activities, like many other government functions, have been largely shaped by imperatives such as "deregulation," "national security," "paperwork reduction," and "privatization." The general thrust has been to reduce the size and scope of the Federal government, except as it relates to national security. Too often these principles have overridden affirmative mandates, ranging from specific statutory requirements, to the government's general responsibility to serve the public's right to know about public needs and government activities.

Management Improvement?

OMB's major role has been to apply presidential priorities through initiatives euphemistically called "management improvement." The first question that must be asked is, "What improvement?"

In August 1988, President Reagan announced that "government-required paperwork imposed on citizens, businesses, and other levels of government has been reduced by an estimated 600 million man-hours of paperwork a year."[98]

While OMB claimed to be making such great progress at paperwork reduction, it was also calculating an increase in the total

Federal paperwork "burden" — the time and money spent responding to Federal requests for information.

According to OMB, from the 1980 base of 1.48 billion hours, the total Federal paperwork "burden" rose to 1.88 billion hours in 1987. That is an overall increase of 22%, despite the reduction of 600 million man-hours a year.

Annual Federal Paperwork Burden[49]
(in millions of respondent burden hours)

1980	1981	1982	1983
1,477.0	1,534.1	1,274.3	2,023.4
1984	1985	1986	1987
1,989.2	1,891.8	1,741.7	1,881.6

There are a number of reasons for these seemingly inconsistent statistics. The yearly percentage reductions are the result of a combination of OMB paperwork clearance disapprovals, Information Collection Budget limits, and the accomplishment of program objectives (for example, the completion of the 1980 Census was largely responsible for cutting the Department of Commerce's paperwork burden by 84%).

The paperwork inventory grew for equally disparate reasons. Some was actually new paperwork, coming from new legislative requirements and agency initiatives. For example, the 140 million hour increase in 1987 was largely due to the enactment of the Tax Reform Act, the Immigration Reform and Control Act, and the Superfund Amendments and Reauthorization Act. Even more growth, however, came from accounting for existing paperwork that escaped earlier OMB scrutiny. First, there was paperwork that agencies should have but did not submit to OMB for review (so-called "bootleg" forms). Second, paperwork that had been exempt from OMB review prior to the enactment of the Paperwork Reduction Act was gradually routed through OMB. Finally, OMB significantly expanded the inventory between 1982 and 1985, by adding in

Federal procurement paperwork, labeling and testing requirements, and paperwork requirements contained in existing regulations.

To compute its paperwork reduction numbers, OMB subtracted each year's reduction from a "baseline" inventory. The year's growth, however, was added to the baseline for the next year. Thus, OMB could show reductions even while the inventory kept growing. Of course, the gross numbers arrived at by this method of counting millions of "burden hours" are far removed from the specific application forms, questionnaires, and reporting requirements used to implement Federal programs. They are not only highly subjective assessments of burden, but the constantly shifting additions and reductions are difficult to compare and are unverifiable.

One can fairly conclude that the paperwork numbers do not tell the true story of Federal paperwork. While the numbers provide OMB with the statistics to show Congress and others that it is busy fighting to reduce Federal paperwork, they show neither the extent to which it has grown or shrunk, nor the impact of reductions on people and programs.

In a similar manner, OMB used gross numbers to evaluate the war on wasteful publications. In its January 6, 1984, *Second Annual Report on Eliminations, Consolidations, and Cost Reductions of Government Publications*, OMB claimed that 3,848 publications, one-fourth of the total Federal inventory, had been targeted for elimination or consolidation. In addition, it reported 5,020 proposed cost reductions for 3,070 other publications. Altogether, this meant savings of $38.3 million from a total of $167.2 million — a savings of 22.9%. OMB said these savings would "impact fiscal years from 1981 through 1985."

The numbers are certainly impressive, but they actually tell very little about government publication activities. For example, the report does not distinguish among types of publications, like non-recurring publications, reprints of non-recurring publications, and periodicals. This makes it impossible, among other things, to

correlate agency publications activities with any given time period. In terms of managing publications, OMB's numbers do not help either. They may provide a tally for publications cutbacks and budget savings, but they do not help agencies make more effective or efficient publications decisions.

As for the projected cost savings, the eliminations, consolidations, and other cost reductions should be reflected in a decrease in agency budget obligations. OMB said that spending on periodicals and pamphlets declined from $164.8 million in 1981 to $137.2 million in 1983, and projected further declines in subsequent years. However, to our knowledge, no further reports were released to show if the obligations actually fell and to what extent they were related to OMB's publications review and cutbacks.

While it appears that the OMB Management and Evaluation Division supervised the publications reviews, they were actually conducted by OMB Budget Examiners, as an expansion of their clearance of agency periodicals under OMB Circular A-3. The Management personnel drew out numbers from the agency submissions in order to prepare their reports and thereafter their interest died. Presumably, the Budget Examiners were meant to track projected savings through their annual budget reviews. There is, however, no record that they validated the claims. A planned review by the Office of the Inspectors General also seems never to have taken place.

In both instances, paperwork reduction and publications cutbacks, the gross numbers provided political hay. They did not, however, produce information with which to assess management improvement efforts — unless, of course, less is simply better, no matter what. As discussed in preceding sections, many observers are not satisfied with OMB's numbers or its reductionist credo. They simply are not an adequate substitute for real management improvement.

OMB Political Control of Federal Information Activities

OMB's lip service to the importance of government information (as in Circular A-130) has obscured neither its principled predilection against Federal information activities, nor its mistreatment of them. We have seen the elimination of research and statistical activities, printing and publications, library support, and program reporting and evaluation. Many information activities that have remained have been restricted through the effort to centralize control (particularly through OMB regulatory, paperwork, and budget review).[100]

The primary issue is not centralization of paperwork or publications review, so much as political control through that review. Responsible management requires a response to the growth of administrative government — and in that light, the development of centralized review at OMB appears to be a reasonable step. However, the record of the past eight years shows what centralized review should not be.

First, review to eliminate duplicative, unnecessarily burdensome, or impractical agency activities is not synonomous with review for consistency with presidential policies and priorities. At OMB, the search for effective *management* has been subverted by the desire for unilateral political *control*.

Second, substantive decision-making should rest with those who have the substantive expertise and authority. This can only be the agencies, which exercise authority mandated by Congress. OMB's control of agency decision-making, particularly during the past eight years, has cut across these lawful lines of authority and accountability, and represents inappropriate models of public administration.

The Information Revolution and the Private Sector

The consequences of the cutbacks in information activities have been magnified by another force — the current revolution in information technology. As information is increasingly collected, stored,

manipulated, and disseminated by computerized means, the distinctions among traditional "ink on paper" information functions begin to break down. Consider, for example, the merging of information collection, manipulation, access, and dissemination in electronic data bases.

Federal policies simply have not kept pace with the changes in technology. The limitations of authorities such as the Freedom of Information Act (FOIA), which were written for a world of discrete pieces of paper, seriously threaten the ability of government to conduct basic internal operations, let alone provide needed public services. For its part, OMB claims to be guiding agencies into the electronic information age. While it has instructed agencies to report on and plan for electronic information activities, it actually has provided precious little direction for them.[101] It has not issued any guidance on how agencies should treat FOIA requests for electronic information.[102] Its distinction between information "access" and "dissemination" in Circular A-130 creates artificial barriers to the use of information in electronic format.[103] Likewise, OMB review of Federal agency data base proposals has involved arbitrary distinctions between information collection, use, and dissemination, and a simplistic deference to the private sector.[104]

Unlike the Federal government, the private sector has a clear vision of the opportunities provided by government information in the electronic information age. Some involve information collection and management through government contracts. Many more involve information manipulation and dissemination with its associated "value added" repackaging. Unfortunately for the public, this vision is a market-driven one that does not include a commitment to maintain the free flow of information for all members of our democratic society.

The inadequacy of OMB's blanket deference to the private sector may be seen in the initial implementation by the Environmental Protection Agency (EPA) of the Emergency Planning and Community Right-to-Know Act of 1986, which mandates public

access to electronic information about routine release of toxic chemicals in communities.[105] EPA has been unable to plan effectively for the required publicly accessible computerized telecommunications system, let alone figure out how to integrate its own incompatible data base systems. Part of the problem is that EPA has had little guidance from OMB (or other agencies) on how to structure such a system, has virtually no notion of how to educate the public about it, and does not have enough money, in any event, to make the system work as required.

It is striking that the private sector has expressed little, if any, interest in establishing and maintaining the on-line toxics data base. Perhaps, as one information industry representative indicated, it is not an immediate "money maker." This disinterest and EPA's own disarray are proof of the need for serious planning for government operations, independent of business interests of the private sector.

Federal agencies, however, are stymied. Despite both increased public needs and increased opportunities for meeting those needs with electronic information products and services, Federal agencies find themselves unable to plan for or carry out effective information activities, largely because of the information policies of OMB.[106]

PART II. LOOKING AHEAD: RECOMMENDATIONS FOR A NEW DIRECTION IN FEDERAL INFORMATION POLICY

A. General Recommendations

There must be a fundamental shift in perspective on the value of Federal information activities, and the responsibility of the Federal government to carry them out. First and foremost, government information should be recognized as an essential public service function, undertaken at public expense to fulfill public needs. Its status as a commodity or resource should be secondary to its nature as a public service.

Second, the framework for management of Federal information activities should be more clearly delineated. OMB's information

management activities evidence the extent to which "management" decisions can affect the direction of Federal information policy. It is appropriate, for example, for OMB periodically to review whether activities are "necessary for the proper performance of the agency's function," as required by the Paperwork Reduction Act. It is not appropriate, however, for OMB to limit public service functions on the basis of policies not approved by Congress, arbitrary cost recovery schemes, or across-the-board deference to the private sector.

Admittedly, there can be a very fine line between policy-making and administration. But to avoid the excesses of the past eight years, there must be a more explicit demarcation of management powers. It must be understood that government's public service functions arise from the political determination of the need for government action, whether for national defense, public education, or employment training. Under the constitutional "separation of powers" doctrine, these public policy goals are set through the enactment of laws by Congress. The President is relied on "to take care that the laws be faithfully executed."[107]

Accordingly, Executive branch officials serving under the President are not free to choose which policies to implement. To do so is to effectively rewrite the nation's laws. And that is what OMB has been doing, striving to implement presidential political priorities regardless of legislatively enacted (and, at times, judicially reinforced) mandates.

This experience proves the need to separate substantive policy powers from management functions, re-establish explicit policy direction through the legislative process, and redirect OMB's attention to straightforward government management.

B. Specific Recommendations

Redirection of the management of Federal information activities will depend on congressional and presidential action. With the beginning of a new Administration, four initiatives should be undertaken to: (1) articulate a comprehensive national information

policy; (2) establish a legislative agenda to reform congressional direction and oversight; (3) reduce centralized political control of Federal information activities; and (4) strengthen the information resources management capabilities of Federal agencies. Each of these efforts entails a number of specific steps, with coordination between Congress and the President being essential.

The Articulation of a National Information Policy

Facing a record of increasing information control, and a future of vast new possibilities for information use, it is necessary to reaffirm the Federal government's responsibility to maintain the flow of information throughout society. Such a policy should, at a minimum, affirm the Federal government's responsibility to ensure:

(1) Collection and evaluation of comprehensive data about national and international conditions, government programs, and public policies;

(2) Dissemination of information (to be widely available and equally accessible) about government operations and other public issues and concerns; and

(3) Maintenance of the free flow of information, in all formats (print and electronic), to guarantee unrestricted access for an informed citizenry to learn of and speak out on issues of concern.

Each of these efforts should be limited only to the extent necessary to protect personal privacy and national security interests.

The vehicle for these policies should be a law (or series of laws) passed by Congress and signed by the President. To achieve this goal, it will be necessary to draw greater attention to the importance of Federal information policy. The new President could help by articulating the importance of developing new coordinated policies. Some of this can be accomplished by the President and OMB through new directions to Federal agencies. With support from congressional leaders from both political parties, a more comprehensive effort could begin with the establishment of a bipartisan

commission or congressional caucus to develop legislative plans that can lead to a national information policy.

Reform of Legislative Direction and Oversight

OMB control of Federal information activities has a legislative origin — through both congressional action and inaction. The Paperwork Reduction Act is the primary example of Congress giving OMB enormous power with insufficient initial guidance and equally ineffective oversight.

Given that the authorization for the Paperwork Reduction Act expires in 1989, there is an upcoming opportunity for Congress to seize the initiative. In reauthorizing the Act, Congress should spell out in detail the goals to be pursued in improving the management of Federal information resources, and more clearly define the role of OMB in carrying out the purposes of the Act. The thrust should be to recast the Act's focus away from paperwork reduction and toward improved information resources management, which is, after all, the Act's underlying premise. Congress should also address the steps needed to bring the management of Federal information resources into the electronic information age. More specifically, the Paperwork Reduction Act should be changed as follows:

(1) Shift OMB's focus from paperwork reduction (and regulatory review) to information resources management (IRM). This would entail strengthening the policy goals that underly the Act, including those for statistics, records management, privacy and information security, and ADP and telecommunications. One critical policy goal is the development of publicly accessible electronic information resources. Accomplishment of the Act's revitalized policy goals would be assisted by the revision of statutory tasks and deadlines, and clarification of the roles and responsibilities of OMB and other agencies with IRM authority (e.g., GSA and NARA).

(2) Restrict OMB's paperwork clearance powers. The Act should be amended to narrow OMB's discretion and to clarify the legislative intent to prohibit OMB from using paperwork clearance to review substantive agency decisions.

(3) Create procedural safeguards for the paperwork clearance process. This includes publicly announced comment periods within which clearance decisions cannot be made, publication of explanations of proposed changes, improved records management of proposals and comments by OMB, and greater documentation of OMB decisions.

(4) Establish new standards for review of paperwork required by regulations. To the extent possible, review of such information activities should be consistent with the Administrative Procedure Act (as intended by the Kennedy Amendment to the 1980 Act — 44 U.S.C. 3504 (h)), and disassociated from regulatory review, particularly to avoid the "regulatory sunset" created by the 1986 reauthorization.

(5) Eliminate the Information Collection Budget (ICB) and place greater emphasis on the use of the publicly accessible Federal Information Locator System (FILS) to catalogue government information activities.

(6) Rename the Act to capture its true purpose, which is managing government information, not simply paperwork reduction — perhaps, the Federal Information Resources Management Act (FIRMA). The mandate of OIRA should be changed accordingly.

Other laws that require revision include:

- The printing laws in Title 44 of the U.S. Code should be amended to facilitate dissemination of government information in the electronic information age, to strengthen the Federal depository library system, and to restructure oversight of Executive branch information dissemination activities — this entails an examination of the role of the Government Printing Office (GPO) and the Joint Committee on Printing (JCP).

• The Freedom of Information Act (FOIA) should be revised to facilitate public access to information in electronic format.

• The Privacy Act should be revised to re-establish protections for personal privacy in the electronic information age.

• Statutory authority for other information management functions, such as GSA's Office of Information Security Oversight and the Department of Commerce's National Telecommunications and Information Administration (NTIA), should be reviewed in light of the effort to consolidate and better coordinate the management of Federal information resources.

Revision of statutes, unfortunately, is not the only legislative need. The interest and ability of Members of Congress to address government information issues is frustrated by the current fragmented committee structure. The relevant committees should be reorganized (or at least better coordinated) to address information policy matters more effectively.

With such changes in legislative direction and oversight, it should be possible to bring about the needed shift in perspective on managing Federal information resources, and on affirming the role of the Federal government to maintain the flow of information to and from the public. This will provide a firm constitutional base for Federal policy, which cannot be provided solely through executive initiative.

Reduction of Centralized Political Control

The record of the past eight years demonstrates that the concentration of relatively unrestrained oversight powers in one office does not necessarily lead to the improved management of Federal information activities. As exercised by OMB, these powers have become tools for unilateral control of essential Federal activities. OIRA's implementation of the Paperwork Reduction Act is the quintessential example of this abuse of management power.

It bears repeating that the primary issue is not centralization of paperwork or publications review, so much as political control through that review. Centralized review in itself is not inconsistent with management improvement or with deference to agency authority. OMB can and should assist the agencies with their information activities. However, it should be the duty of the agency heads (also political appointees), and *not* OMB, to balance the substantive and political merits of any given initiative.

To avoid repeating past mistakes, the scope of OMB's review powers should be reduced, replacing OMB micro-management and clearance of individual agency decisions with more general oversight of information practices. To change OIRA's focus from paperwork reduction to information management will require new internal policies and procedures, not to mention new staffing patterns.

Such changes require active support by the new President. First, OMB is recognized as an advocate and enforcer of presidential policies. Although often criticized, it is just as often accepted as a necessary evil — the "hit man" the President cannot do without. Accordingly, presidential support for the redirection of OMB's information control powers is important. Second, while the President can and should advocate the development of a national information policy and propose changes to laws such as the Paperwork Reduction Act, he can take more immediate action on his own through Executive branch policy directives.

Specifically, the President should instruct the director of OMB to:

- Replace OIRA micro-management with general oversight as a priority for information resources management.

- Select an OIRA Administrator and staff qualified in information policy and information resources management.

- Direct OIRA to eliminate the Information Collection Budget (ICB) and integrate the mandated, but still not fully operational,

Federal Information Locator System (FILS) into the paperwork clearance process to better monitor agency information collection activities and avoid duplication.

• Direct OIRA to delegate wider paperwork clearance authority to individual agencies, as authorized by the Paperwork Reduction Act,[108] and rely more heavily on professional peer review and similar agency practices to determine "practical utility" of agency information collection activities.

• Direct OMB to amend its regulations to strengthen public participation in paperwork review, including:

— Creation of public comment periods during which paperwork clearance decisions cannot be made;
— Required maintenance of publicly accessible agency and OMB paperwork records containing proposals, explanation of any changes to them, and communications with non-agency people (OMB, other agencies, non-governmental interests);
— Requirements for uniform *Federal Register* notices that more fully describe information collection proposals, changes to them, and opportunities for public comment;
— Use of the Federal Information Locator System (FILS) to expand awareness of Federal information collection activities.

• Appoint a qualified chief statistician, increase statistical office staff, revise statistics directives to affirm broad policies and to avoid OMB micro-management, and coordinate and improve annual budgeting for statistical agencies.

• Order the revision of OMB Circulars A-130 and A-3 to affirm Federal information dissemination responsibilities, to clarify respective roles of government and private information sectors, and to limit OMB review of information dissemination activities.

With this reorientation, OMB should be able to work much more effectively with Congress and other agencies to improve Federal information resources management.

Strengthening the Information Resources Management (IRM) Capabilities of Federal Agencies

OMB's record of unilateral and often politically motivated control of agency information activities demonstrates the need to reaffirm the responsibility of Federal agencies to undertake and manage information activities as an integral part of their legislatively mandated missions. The most obvious need is to increase the budgets, authority, and status of agency IRM officials and agency management of information activities.

PART III. CONCLUSION

In 1816, reflecting on government, Thomas Jefferson wrote:

> I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.[109]

Jefferson's words are as true today as they were in 1816. The new President faces critical issues, many of which require new ways of thinking and new solutions. He must grapple with a fragile domestic economy increasingly tied to international conditions; confront major environmental hazards; wrestle with persistent poverty, illiteracy, long-term health care, and drug problems; protect U.S. economic and political interests abroad; guide national defense strategy; and more.

Equally important as these issues — and woven into each of them — is protection of our information infrastructure, the core element of our democracy. Without the free flow of information, we tear at the fabric of our Constitution and Declaration of Independence. "We, the people" depend on our Federal government to supply us with information about our society so that we can judge how to respond to issues.

With the growth of new technologies, our appetite for information has grown and our ability to process it has increased geometrically. Unfortunately, Federal information policies have not kept pace with this information explosion. Jefferson was correct, we must change laws and institutions "to keep pace with the times."

The President should do two things immediately to improve the management of Federal information activities. First, he should acknowledge the Federal responsibility to collect and disseminate information that is of value to all sectors of our society, not just the Federal government. In this, he must not only elevate the symbols of the public's right to know about public concerns and government initiatives, but also require of OMB a new commitment to improve the management of Federal information activities, including the use of electronic information technology.

This is not to say there is no role for the private sector. The private sector has played a long and valued role in helping the government collect and disseminate information. However, the current preoccupation with divesting Federal responsibility to disseminate information when the private sector "would otherwise" provide it, is simply too extreme. The private sector should be encouraged to add value and manipulate Federal information so that it might be more useful, but this should not weaken the Federal responsibility to provide information to the public.

It is essential that the President redirect the fundamental focus of OMB's Office of Information and Regulatory Affairs (OIRA) away from paperwork reduction — with its decision-making bias of "burdens" without regard to benefits — and towards improved information management. This will require new staff expertise, and

an increase in other resources in order to guide agencies into the computer age and to coordinate the vast information resources of the Federal government. It will also require OIRA to be more responsive to other agencies, Congress, and the public.

A second immediate task for the President is to couple this new direction for information policy with forward-thinking legislative proposals. The President and Congress will need to address the reauthorization of the Paperwork Reduction Act in 1989. It is a great opportunity to correct existing flaws and establish needed policies. Other laws dealing with information policy should also be revised to "go hand in hand" with the new electronic information age, to "keep pace with the times," as Jefferson suggested.

In general, it will help greatly if the President can elevate Federal information policy as a critical item on the congressional agenda. Currently, information policy is not a high priority in Congress. Nevertheless, Congress has demonstrated time and again the ability to rise to the occasion on issues deemed important to new presidents.

OMB's assertion of policies in the absence of congressional direction should warn Congress that if we continue down this road, merely patching occasional holes, we surely will pay even more dearly for the missed opportunities. Legislators and policymakers will find themselves without essential information with which to make decisions, the public will be unable to find out what is happening in government, and the press, which has been "stonewalled" in the past, will face even greater obstacles.

If the President and Congress do not guide us down the road that leads to a comprehensive information policy and improved information resources management, then "[w]e might as well require a man to wear still the coat which fitted him when a boy."

Notes

1. Federal Reports Act of 1942, 56 Stat. 1078, Section 2.

2. *Ibid.*, Section 3 (d).

3. Trans-Alaska Pipeline Authorization Act of 1973, P.L. 93-152, 87 Stat. 576 (1973), Section 409.

4. U.S. Commission on Federal Paperwork, *Final Summary Report*, October, 1977.

5. Office of Management and Budget, *Paperwork and Red Tape: New Perspectives, New Directions*, September, 1979, pp. 21-22. See also Executive Order No. 12044, "Improving Government Regulations," March 23, 1978, and Executive Order No. 12174, "Paperwork," November 30, 1979.

6. Carter, Jimmy, *Compilation of Presidential Documents: Administration of Jimmy Carter, 1980*, pp. 2794-97 (December 11, 1980).

7. U.S. Senate, Governmental Affairs Committee, Senate Report No. 96-930, September 8, 1980, p. 8.

8. U.S. Commission on Federal Paperwork, Information Resources Management, September, 1977, pp. 14-15.

9. In the 1986 reauthorization of the Paperwork Reduction Act, Congress stressed the importance of information resources management when it added its definition to the Act, at 44 U.S.C. 3502(13):

> [T]he term "information resources management" means the planning, budgeting, organizing, directing, training, promoting, controlling, and management activities associated with the burden, collection, creation, use, and dissemination of information by agencies, and includes the management of information and related resources such as automatic data processing equipment . . .

10. 44 U.S.C. 3505

11. U.S. Senate, Hearings before the Subcommittee on Federal Expenditures, Research, and Rules, Senate Governmental Affairs Committee, April 14, 1982.

12. U.S. General Accounting Office, *Implementing the Paperwork Reduction Act: Some Progress, But Many Problems Remain*, April 20, 1983.

13. OMB Circular A-130, issued December 12, 1985, 50 FR 52730 (12/24/85).

14. *Ibid.*, Section 7(a).

15. *Ibid.*, Section 8 (a) (11) & Appendix IV-11. OMB Circular No. A-25, "User Charges," instructs Federal agencies to assess fees for government services, which provide "special benefits to an identifiable recipient above and beyond those which accrue to the public at large." Circular A-25, section 3(a)(1), 9/23/59. Currently under review, a draft revision of the circular was published in the *Federal Register* on July 1, 1987 (vol. 52, p. 24890).

Relevant to both the cost-recovery and cost/benefit test principles is the following observation: "The cost recovery test assumes that the benefit of a government information program can be measured by its revenue. None of the broader benefits of public information are given any weight." Starr, Paul, and Ross Corson, "Who Will Have the Numbers? The Rise of the Statistical Services Industry and the Politics of Public Data," *The Politics of Numbers*, William Alonso and Paul Starr, editors, Russell Sage Foundation, 1987, p. 443.

16. OMB Circular A-76, Section 4 (a).

17. See discussion of "inherently governmental" functions in OMB Circular A-130, at Section 7(e) and Appendix IV-6 & 10.

18. Address of Douglas Ginsburg, then Administrator of OMB's Office of Information and Regulatory Affairs, before a gathering of members of the Information Industry Association (IIA), September 20, 1984, pp. 4 & 19.

19. OMB's bias against the public service aspects of government information was seen in the March 15, 1985, draft of Circular A-130 (50 FR 10734). While the tone of the final version was softened, the language in the draft reflects OMB's druthers.

While acknowledging the importance of government information, the proposed circular stated, "The value of government information to the government is solely a function of the degree to which the information contributes to achieving agencies' missions." Section 7(c), at 50 FR 10739.

The proposal contained no mention of the depository library system. The final version speaks of the library system as a "safety net" (Appendix IV-11), a rather parsimonious view of the role of libraries in the "Information Age," but not surprising given OMB's rapture with private sector information vendors.

The draft circular narrowly defined the term "access to information" to mean "the function of providing to members of the public, *upon their request*, the government information to which they are *entitled under law*." Section 6(f), at 50 FR 10739 (emphasis added).

The justification for preserving government records included creation of "an official record for agency management and historical purposes." Section 7(i), at 50 FR 10739. It did not contain the phrase "public accountability," which was added in the final version as a reason for creation of an official record.

20. 44 U.S.C. 3504(c)(2).

21. In 1988, OMB amended its paperwork regulations to require that agencies place on each form a burden estimate and a request for comment on the estimate. 5 C.F.R. 1320.21 (53 FR 16631, 5/10/88). This went beyond the requirements of the Act in 44 U.S.C. 3504 (c) (3) and 3507 (a) (2). During its rulemaking, OMB was not impressed with the argument that because such notices are directed solely at the respondents to information requests (and not other members of the public who may benefit from its collection), they are likely to receive comments focused on the burdens of information collection, not the benefits, thereby creating a one-sided record against information collection. 53 FR 16618 (5/10/88).

22. To help with enforcement, the Act contains a "public protection" clause. The idea was to increase agency compliance (a problem under the 1942 Reports Act process) by giving the public an enforcement role. The Act states, at 44 U.S.C. 3512:

> Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to agency if the information collection request involved . . . does not display a current control number assigned by the Director [of OMB], or fails to state that such request is not subject to this [Act].

The thought was that the threat of people legally ignoring government requests for information would give agencies the incentive to comply with the Act's requirements. This was deemed to be unenforceable as a practical matter — you could not have people ignoring regulations, for instance, just because of a missing number on the bottom of a form. However, with the congressional reaffirmation in the 1986 reauthorization, there is a chance that it may be given some more weight.

23. OMB, *Managing Federal Information Resources: Second Annual Report Under the Paperwork Reduction Act of 1980*, 1984.

24. OMB's regulatory review power was increased in January 1985, by Executive Order 12498, "The Regulatory Planning Process." For an explanation of OMB's regulatory review powers and their relation to paperwork clearance, see OMB Watch, *Through the Corridors of Power: A Guide to Federal Rulemaking*, 1987.

25. U.S. Senate, Hearing before the Subcommittee on Federal Expenditures, Research, and Rules of the Committee on Governmental Affairs, March 18, 1981, p. 22.

26. U. S. Senate, Report No. 96-930, September 8, 1980, pp. 8-9.

27. 44 U.S.C. 3518(e). In 1986, Congress also added language more explicitly restricting the use of appropriations under the Act for functions specified in the Act. 44 U.S.C. 3520. However, the Conference Report states, "[OIRA] may perform other functions provided it obtains separate funding for these activities." Conference Report to accompany H.J. Res. 738 (10/15/86), Report No. 99-1005, p. 771.

28. *United Steelworkers of America, et al.*, v. *Pendergrass, et al.*, Case No. 83-3554, U.S. Court of Appeals for the Third Circuit, August 19, 1988, pp. 11-12. This case involved a long-running challenge to the failure of the Department of Labor's Occupational Safety and Health Administration

(OSHA) to extend its Hazard Communication Standard to the non-manufacturing sector. OMB was accused of adding to the delay through its paperwork review. For more information, see OMB Watch, *Dear OMB Watcher*, Oct/Nov 1988, Vol. I, No. 5, and *Monthly Review*, August 31, 1988, Vol. IV, No. 8.

29. While Federal independent regulatory agencies are exempt from OMB regulatory review, their information collection activities, even if contained in a regulation, are reviewed by OMB under the Paperwork Reduction Act. To mitigate the effect of this OMB review, independent regulatory agencies are permitted to "override" OMB paperwork disapprovals. 44 U.S.C. 3507(e).

30. 44 U.S.C. 3504(h)(5) (emphasis added). This section was not in the Act as originally proposed. It originated in an amendment offered on the floor of the Senate on behalf of Senator Edward Kennedy. The amendment was meant to replace a general mandate for OMB oversight with a detailed review process geared to "notice and comment" rulemaking under the Administrative Procedure Act.

The so-called Kennedy Amendment was accepted but its separate procedures and language, notably the expression "collection of information *requirement*" (emphasis added), were inconsistent with the rest of the Act, which was framed in terms of OMB discretion to review, and approve or disapprove all agency "information collection *requests*" (emphasis added).

The Kennedy Amendment certainly circumscribed OIRA's powers, but it also fractured the structure of the Act. This, along with subsequent interpretations from OMB and the Department of Justice, resulted in a confusing set of procedures which frustrated everyone. In the 1986 reauthorization, congressional supporters eliminated definitional inconsistencies between "request" and "requirement," but did not address the basic issues present in the original compromise between unlimited OMB review and the integrity of the rulemaking process.

For an excellent discussion of this and other aspects of the Paperwork Reduction Act, see Funk, William, "The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law," *Harvard Journal on Legislation*, Vol. 24, No. 1, Winter 1987, p. 1.

31. In 1981 and 1982, the Department of the Treasury and OMB disagreed about review of regulatory paperwork. This led to an opinion of the

Department of Justice's Office of Legal Counsel, which stated, among other things, that the three-year paperwork clearance limit did not apply to information collection requirements contained in regulations. This opinion was the major impetus behind the 1986 amendments.

The drafters of the 1986 legislation intended, by including the term "information collection requirement" in the definition of "information collection request" (44 U.S.C. 3502(11)), to pull regulatory paperwork within the coverage of the three- year limit to paperwork approval (44 U.S.C. 3507(d)).

32. The Information Collection Budget (ICB) is not mentioned in the Act. OMB has claimed, however, that it is generally authorized by the Act's requirement that OMB set annual goals for paperwork reduction (44 U.S.C. 3505).

33. OMB Watch, *Eye on Paperwork* (precursor to the *Monthly Review*), Vol. 2, No. 2, February 26, 1986, pp. 1-5.

34. In three years of covering each month's paperwork decisions, OMB Watch has found literally dozens of instances in which clearance decisions were made before the public was given any notice of a pending paperwork review.

35. OMB Watch, *Monthly Review*, Vol. 3, No. 12, December 1987, p. 7.

36. U.S. House of Representatives, Boardman, Barbara, Ian Greaves, et al., *OMB Review of CDC Research: Impact of the Paperwork Reduction Act*, A Report Prepared for the Use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, Committee Print 99-MM, October, 1986.

37. For a discussion of OMB disapproval of ethnic and racial questions for HUD and VA program beneficiaries, see the hearing by the Employment and Housing Subcommittee of the House Committee on Government Operations, "OMB's Proposed Restrictions on Information Gathering and Dissemination by Agencies," July 17, 1985. For related discussion of OMB's disapproval of minority business development reporting requirements, see OMB Watch, *Monthly Review*, December 23, 1985, Vol. 1, No. 3.

OMB interference with planning for the 1990 Census was the subject of a joint hearing by the House Select Committee on Aging and the Subcommittee on Housing and Consumer Interests, "The 1990 Census and Housing Data for the Elderly: Can We Count On It," February 24, 1988, and a hearing of the House Subcommittee on Census and Population of the Committee on Post Office and Civil Service, "Review of the 1990 Decennial Census Questionnaires," April 14, 1988. See also OMB Watch, *Monthly Review*, Vol. III, Nos. 6, 8, 9, 10, & 11, and Vol. IV, Nos. 2 & 3.

OMB disapproval of information collection requirements in proposed FCC telephone regulations, and disapproval of a FDA cosmetic risk assessment exposure survey were reported on in OMB Watch, *Monthly Review*, October 7, 1988, Vol. IV, No. 9.

38. The Reorganization Act of 1939, which established the Bureau of Budget (BoB) within the Executive Office of the President, moved statistical coordination functions from the Central Statistical Board, an independent regulatory agency created in 1933, to BoB. The Federal Reports Act of 1942 greatly increased the authority of the Office of Statistical Standards within BoB.

39. Wallman, Katherine K., "The Statistical System Under Stress: Framing An Agenda for Success" (Working Paper), Council of Professional Associations on Federal Statistics, August 12, 1988, p. 25.

40. Historically, as the need for government statistics grew, the statistical policy office grew, though it has never had an easy time. By the end of the 1940s, the Bureau of the Budget (BoB was OMB's predecessor) had 69 people managing the Federal Reports Act, a significant portion devoted to overseeing statistics. When the statistical policy office was moved from OMB to the Department of Commerce in 1977, 15 of 29 staffers went with it, the rest were kept for paperwork review. Commerce increased the staff to 25, but only sent back 15, when the office was returned to OMB by the Paperwork Reduction Act. See, Jeanne E. Griffith, "Recent Trends in Federal Statistical Programs: A Summary of Findings," Congressional Research Service, September 18, 1984; and George Hall and Courtenay Slater, *The Federal Statistical System: 1980 to 1985*, U.S. House of Representatives, Committee on Government Operations, November, 1984, p. 44.

Since 1981, OMB has had between five and seven professional statistical policy staff positions. Within a year of the statistical policy office being placed in OIRA, nine staffers slotted for statistical coordination were

reassigned to handle regulatory and paperwork review. This was the fate of the persons with the most experience in Gross National Product accounts, which was a priority concern in the office.

According to Hall and Slater, the staffing problem has been exacerbated by hiring "persons at lower levels with less technical experience," or with no experience at all. For example, there finally was no staff member expert in social, demographic, or labor statistics.

41. The Chief of the Statistical Policy Office, Dorothy M. Tella, received a masters in economics from Harvard University in 1961. Prior to coming to OMB, she was a proprietor of an economic consulting business. And prior to that, for more than eight years, she was an economist with the Chamber of Commerce of the U.S.

42. Crittenden, Ann, "A World with Fewer Numbers," *The New York Times*, July 11, 1982, p. 4.

43. Slater, Courtenay, quoted at, U.S. House of Representatives, Hearing before a Subcommittee of the Committee on Government Operations, *Federal Government Statistics and Statistical Policy*, June 3, 1982, p. 59.

44. See, for example, Senate Report No. 98-576, August 6, 1984; House Report No. 98-17, May 16, 1983; and House Report No. 97-901, September 30, 1982.

45. Data compiled by OMB Watch from an analysis of OMB paperwork review records. See OMB Watch, *Monthly Review*, Vol. IV, Nos. 2-7.

46. For a discussion of the noncash benefits issue, see hearings and meetings held by the House of Representatives Subcommittee on Census and Population during 1985 and 1986.

47. The $1.5 billion is spent by more than 70 Federal agencies that spend at least $500,000 annually for statistical activities.

48. Hall and Slater, *op. cit.*, p. 7.

49. U.S. Congress, Joint Economic Committee, *The 1988 Joint Economic Report*, April 20, 1988, p. 55.

50. Wallman, *op. cit.*, p. 34.

51. *Ibid.*, p. 37.

52. This is seen in the recommendations of the Commission on Organization of the Executive Branch of Government, the so-called First Hoover Commission (created in 1947), the Federal Records Act of 1950 (44 U.S.C. chapters 21, 29, 31 & 33, as amended), and the recommendations of the 1955 Second Hoover Commission.

53. The Bureau of the Budget had records management authority under President Truman's 1946, Executive Order No. 9784.

54. U.S. Commission on Federal Paperwork, *Records Management in Federal Agencies*, July 1977, p. 12; quoted in National Archives and Records Administration (NARA), *NARA, GSA, and OMB: Spheres of Interest in Records Management* (unpublished paper — NARA87-177), July, 1987, p. 6.

55. The National Archives and Records Administration Act of 1984, P.L. 98-497, October 19, 1984, codified at 44 U.S.C. chapters 21, 25, 29, 31, & 33.

56. Joint Explanatory Statement of the Committee of Conference, National Archives and Records Administration Act of 1984, p. 25; quoted at NARA87-177, *op. cit.*, p. 7. See also, 44 U.S.C. 2901(2).

57. 44 U.S.C. 2901(2).

58. See, for example, NARA87-177, *op. cit.*, p. 12.

59. OMB Circular A-130, Section 7(j). Note that the phrase "public accountability" was not in the circular as originally proposed (50 FR 10734, March 15, 1985). It was added, along with other language in other parts of the circular, after OMB received considerable critical comment on its proposal.

60. *Ibid.*, Appendix IV- 18.

61. *Ibid.*, Sections 9(a), (e), (g), & (h)(3).

62. Report of the Committee on the Records of Government, March 1985, p. 42. This committee was a non-governmental body sponsored by the American Council of Learned Societies, the Social Science Research Council, and the Council on Library Resources. Funding was provided by the

Andrew W. Mellon Foundation, the Rockefeller Foundation, the Alfred P. Sloan Foundation, and the Council on Library Resources.

63. *Ibid.*, p. 43.

64. OMB regulatory review initiated the struggle between NARA and the Department of Justice over NARA's regulation of access to presidential documents. See, for example, U.S House of Representatives, Committee on Government Operations, *Access to the Nixon Presidential Materials Should be Governed by NARA Regulations, Not OMB or Department of Justice Actions*, House Report No. 99-961, October 3, 1986.

65. Privacy Act of 1974, P.L. 93-579, 5 U.S.C. 552a. OMB's Privacy Act guidelines were promulgated as OMB Circular A-108, "Responsibilities for the Maintenance of Records about Individuals by Federal Agencies" (July 1, 1975). Circular A-108 was subsumed into OMB Circular A-130, "Management of Federal Information Resources" (December 12, 1985).

66. The Privacy Protection Study Commission, *Personal Privacy in an Information Society*, July 1977.

67. See discussion by Berman and Goldman in "A Federal Right of Information Privacy: The Need for Reform," another in this series of papers. The dissipation of the Privacy Act's substantive provisions is also seen in OMB's directives to agencies. "Federal Agency Responsibilities for Maintaining Records about Individuals", OMB Circular A-130, Appendix I (formerly Circular A-108), is primarily procedural, certainly not "policies, principles, [or] standards," as required by the Paperwork Reduction Act (44 U.S.C. 3504(f)).

68. Opening statement of Representative English, *Oversight of the Privacy Act of 1974*, Hearings before a Subcommittee of the Committee on Government Operations, House of Representatives, June 7 & 8, 1983, p. 5. See also, House Report No. 98-455 (1983).

69. See, for example, testimony of Christopher Demuth, then-OIRA Administrator, *Oversight of the Privacy Act of 1974*, *op. cit.*, pp. 60 & 72.

70. See, for example, testimony of John Shattuck, *ibid.*, p. 261.

71. OMB's guidelines on the relation of FOIA and the Privacy Act (49 FR 12338, March 29, 1984) were rejected by Congress in the Central Intelligence Agency Information Act, P.L. 98-477, October 15, 1984.

72. OMB, "The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines," 52 FR 10012, March 27, 1987.

73. Sections 110 & 111 of the Federal Property and Administrative Services Act of 1949, codified at 40 U.S.C. 757 & 759.

74. U.S. General Accounting Office, *OMB Needs To More Fully Consider Government-Wide Implications In Its Telecommunications Initiatives* (GAO/IMTEC-84-21), September 7, 1984, p. 1.

75. U.S. General Accounting Office, *Information Management: Leadership Needed in Managing Federal Telecommunications* (GAO/IMTEC-87-9), May, 1987, p. 3.

76. See, for example, U.S. House of Representatives, Committee on Government Operations, *Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview*, House Report No. 99-560, April 29, 1986.

77. For a discussion of the state of IRM, see Caudle, Sharon, *Federal Information Resources Management: Bridging Vision and Action*, National Academy of Public Administration, June 1987.

78. Critical review, not to mention public debate, was sadly lacking at the time of the Paperwork Reduction Act's first reauthorization in 1986. See OMB Watch, *Paperwork Reduction: The Quick Fix of 1986*, November, 1986.

79. In 1982, the General Counsel of GPO issued an opinion that GPO's printing and publishing authority in Title 44 of the U.S. Code did not cover information in electronic format. Joint Committee on Printing, *Provision of Federal Government Publications in Electronic Format to Depository Libraries*, Senate Print 98-260 (1984), Appendix 8.

80. While Federal government printing originally involved primarily congressional documents, it is now largely taken up with Executive branch publishing. Recent U.S. Supreme Court decisions suggest that there may be constitutional separation of powers problems with the supervision of Executive branch printing by GPO and the JCP, which are Legislative branch entities. See *I.N.S* v. *Chadha*, 462 U.S. 919 (1983), and *Bowsher* v. *Synar*, 106 S.Ct. 3181 (1986). OMB and the Department of Justice certainly have made this argument.

81. The Act of May 11, 1922, 42 Stat. 541, codified at 44 U.S.C. 1108.

82. Reagan, Ronald, *Weekly Compilation of Presidential Documents* (April 20, 1981), and "Memorandum for the Heads of Executive Departments and Agencies," April 20, 1981.

83. OMB Bulletin No. 81-16 (April 21, 1981).

84. OMB Bulletin No. 81-16, Supplement No. 1 (October 9, 1981).

85. *Washington Post*, January 7, 1984, p. A5. See also, OMB, *Second Annual Report on Eliminations, Consolidations, and Cost Reductions of Government Publications*, January 6, 1984.

86. See, for example, Hernon, Peter, and Charles McClure, *Federal Information Policies in the 1980s: Conflicts and Issues*, Ablex Publishing, 1987; Morehead, Joe, "Abridging Government Information: The Reagan Administration's War on Waste," *Dartmouth College Library Bulletin*, April 1985, p. 58; Stokes, Judith, "Federal Publications Cutbacks: Implications for Libraries," *Government Information Quarterly*, Vol. 1, 1984, p. 49; and American Library Association, *Less Access to Less Information by and about the U.S. Government: A 1981-1987 Chronology*, February, 1988.

87. OMB, *Second Annual Report on Eliminations*, *op. cit.*, p. 6.

88. OMB Bulletin No. 85-14 (May 2, 1985).

89. OMB's antipathy for the JCP has been felt for some time. Under President Carter, OMB opposed the JCP's (unsuccessful) efforts to revise the printing laws. In 1983, OMB side-stepped the JCP when, with the support of the Reagan appointed Public Printer, it recommended significant cuts in GPO printing operations (Schwarzkopf, Le Roy, "Information Update," *Government Publications Review*, 3-4/84, p. 189). In 1984, OMB requested a Justice Department opinion that said the JCP's printing and binding regulations were "without foundation in law" (Department of Justice opinion, April 11, 1984).

A final blow was almost landed in 1987 when a new government-wide procurement regulation instructed agencies to ignore section 501 of Title 44 of the U.S. Code, which requires them to obtain JCP approval before conducting printing operations other than through GPO (52 FR 9036 (3/20/87)). The rule was based on another 1984 Justice Department opinion that

argued that the JCP approval is unconstitutional under *I.N.S. v. Chadha*, 462 U.S. 919 (1983).

The regulation would have allowed agencies to bypass GPO and the JCP — now the only way for Congress to oversee printing and the only impediment to complete OMB control of printing. Full implementation of the regulation was stalled by an appropriations restriction inserted in the December 1987, Continuing Resolution (section 309(a) of the Legislative Branch Appropriations Act, P.L. 100-202; see also p. 1001, Conference Report accompanying H.J. Res. 395, House Report 100-498 (12/22/87)). On August 29, 1988, the *Federal Register*, announced a proposal to rescind the regulation (p. 33017), because of "fundamental congressional concern."

90. 50 FR 52730 (December 24, 1985). OMB is currently working a revision of Circulars A-130 and A-3 to integrate the two and update them to more squarely deal with electronic information. See OMB Bulletin 87-14 (6/8/87), Bulletin 88-10 (4/22/88), 52 FR 29454 (8/7/87), and 52 FR 40980 & 40981 (10/26/87).

91. OMB Circular A-130, *op. cit.*, Section 8 (a) (9), emphasis added.

92. *Ibid.*, Appendix IV-8.

93. See, for example, the Information Industry Association's "Principles of an Information Society:"

> Government should establish a legal and regulatory environment which foster a competitive marketplace for the development and delivery of information products and services.
>
> Government should only provide those information products and services which are essential to society's well-being and which are not, and cannot be, provided by the private sector.

Information Industry Association, *Public Policy Activities of the Information Industry Association*, Washington, D.C., January, 1988, p. 2.

94. See, for example, Douglas Ginsburg's remarks to the IIA (see note 18, above), and OMB Circular A-130, *op. cit.*, particularly Section 8 (a) (9).

95. Starr, Paul, and Ross Corson, "Who Will Have the Numbers? The Rise of the Statistical Services Industry and the Politics of Public Data," *The Politics of Numbers*, William Alonso and Paul Starr, editors, Russell Sage Foundation, 1987, p. 426.

96. As opposed to other commodities, information is nondepletable; it can be resold without loss of character. Its economy of scale is such that the precipitous fall in marginal costs frustrates attempts to justify elevated prices. Information's economy of scope is such that once produced it can be supplied easily in a variety of formats. Finally, information is simply difficult to evaluate — often one cannot know its value without knowing the information itself. *Ibid.*, pp. 431-2, & 444.

97. See Frieden, Karl, "Public Needs and Private Wants," *Social Policy*, Fall 1986, Vol. 17, No. 2, pp. 19-30.

98. Remarks of President Reagan at the 1988 Republican National Convention, August 15, 1988. The same claim was made in 1987, in "The President's Management Message," *Management of the United States Government, FY 1988*, p. 2.

99. OMB, *Managing Federal Information Resources*, Annual Reports Under the Paperwork Reduction Act, 1982-1988.

100. See Demac, Donna, *Liberty Denied: The Current Rise of Censorship in America*, PEN American Center, 1988, and *Keeping America Un-Informed: Government Secrecy in the 1980's*, Pilgrim Press, 1984, and Katz, Steven, *Government Secrecy: Decisions Without Democracy*, People for the American Way, 1987.

101. See, for example, OMB Bulletin 88-10, "Report on Government Information Dissemination Products and Services," April 22, 1988, and the "Draft Policy Guidance on Electronic Collection of Information," 52 FR 29454 (August 7, 1987). See also, OMB's October 1988, paperwork approval of a Department of Labor proposal to collect information on "Benefit Rights and Experience" for only one year (instead of three) because after that "reporting should be done electronically. If this is not the case, future submissions should explain why any delays are occuring." OMB Paperwork Control No. 1205-0177, action date — October 28, 1988.

102. Federal agencies are increasingly confronting requests for records maintained in electronic format. These requests will continue to grow as

more and more information is collected electronically, which OMB supports (see n. 100, above). While FOIA was written with paper records in mind, its underlying policy clearly applies to government information, regardless of the format. Nevertheless, OMB has steered clear of any effort to help agencies cope with electronic FOIA issues. In that absence some agencies are proceeding on their own — not all in the same direction. One example of a commendable decision is that of the Department of Energy (DOE), which decided on May 26, 1988, that if it has software capable of searching a data base, FOIA requires it to use that software to search the data base for requested records, even if the search differs from that normally performed by the agency (DOE Case No. KFA-0158). This and other issues are the sort that OMB should be addressing as a part of its responsibility to oversee the management of Federal information resources.

103. OMB Circular No. A-130, *op. cit.*, Section 6(f) & (g), & Appendix IV-2 & 3. The distinction between "access" and "dissemination" is an attempt to limit agency information activities to a very narrow set of functions for which there are explicit statutory requirements. OMB is basically still fighting against FOIA and agency publications. It is not concerned with providing forward-looking policy direction.

104. See, for example, OMB's November 1987, paperwork disapproval of a National Oceanic and Atmospheric Administration (NOAA) proposal to create a marine research database. NOAA's Office of Undersea Research wanted to create a data base on the use of undersea research tools for its grantees and others in the marine research community. OMB rejected the proposal because: (1) the information would "aid the marine science community and is not directly required to support ongoing Federal government programs;" (2) there was insufficient evidence of the need for the information or how NOAA would disseminate it; and (3) the data base "would be in competition with a service performed by the private sector and would be in conflict with current Administration policy." OMB Watch, *Monthly Review*, Vol. 3, No. 12, December 31, 1987, p. 3.

105. The Emergency Planning and Community Right-to-Know Act (EPCRA) was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499, October 17, 1986).

106. See, for example, U.S. Congress, Office of Technology Assessment, *Informing the Nation: Federal Information Dissemination in an Electronic Age*, October 1988; and Association of Research Libraries, *Report of the Task Force on Government Information in Electronic Format*, 1987.

107. U.S. Constitution, Article II, Section 3.

108. 44 U.S.C. 3507(e).

109. Thomas Jefferson, letter to Samuel Kercheval, 1816.

110. OMB Circular A-130, *op. cit.*, Section 8 (a) (9).

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